



Comptroller General
of the United States

Washington, D.C. 20548

Decision

PR

Matter of: Eastern Forwarding Company

File: B-248185

Date: September 2, 1992

DIGEST

Loss of or damage to goods that pass through the hands of several custodians is presumed to have occurred in the custody of the last one.

DECISION

Eastern Forwarding Company requests review of our Claims Group's settlement denying its claim for a refund of amounts the Navy set off against funds otherwise due Eastern, for loss and damage to a service member's household goods. We affirm the settlement.

Eastern picked up the household goods from a non-temporary storage (NTS) warehouse where they had been stored for more than 2 years;¹ Eastern did not take any exception to the inventory at that time. After Eastern delivered the goods the next month, the member claimed that some items had been lost and some damaged. Notice was timely dispatched to Eastern, and the Navy subsequently set off the funds in issue. Our Claims Group endorsed the Navy's action in its settlement.

In requesting further review, Eastern argues that it should not be held liable for loss/damage to articles that had been stored in the warehouse because (1) Department of Defense (DOD) 4500.34R, Personal Property Traffic Management Regulation, expressly precludes a carrier from opening containers to inspect their contents when the carrier receives a shipment from a warehouse for delivery, and (2) the shipment was in the custody and control of the warehouseman and/or the government for a significant amount of time.

We find no legal merit in Eastern's argument. It is well-established that loss of or damage to goods that pass

¹Eastern's services were rendered under Government Bill of Lading TP-609,085.

through the hands of several custodians is presumed to have occurred in the custody of the last one. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978) and cases cited therein. Eastern's claim that it only delivered goods as tendered to it by the NTS facility does not relieve the carrier of liability as the last bailee. Air Land Forwarders, B-247425, June 26, 1992. Nor can the carrier avoid liability under the cited rule simply because the warehouse had custody of the shipment for longer than did Eastern. See Stevens Transportation Co., B-243750, Aug. 28, 1991. To be relieved of liability, Eastern must show that the loss or damage did not occur while the goods were in its custody (or resulted from one of a number of causes for which a carrier is not liable). Id.

We also point out that according to item 154 of the standard Domestic Personal Property Rate Solicitation, a carrier picking a shipment up from an NTS facility is paid for packing inspection. Moreover, the provision in DOD 4500.34R cited by Eastern to support its position addresses whether the government will pay for a carrier to repack a shipment retrieved from an NTS facility (only if pre-authorized by the transportation office as needed to protect the shipment from damage in transit to the final destination), and does not on its face preclude a carrier from opening cartons and repacking them at its own expense. See also, McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. at 417.

The Claims Group's settlement is affirmed.

for *Seymour E. Hinchman*
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